SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-018488 03/17/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

VILLAS WEST VI HOA

EILEEN T BALDWIN

v.

PEDRAM AZIZI, et al.

SONYA E UNDERWOOD

MARYVALE JUSTICE COURT
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

In the case at hand a drunk driver crashed through a block wall owned and maintained by Appellee, a home owner's association, as well as a wooden fence, a townhouse, and a shed owned by Appellant. Appellant paid $750 for a block wall to replace the wooden fence, $250 for stucco work, and $70 for the hauling of trash. Appellee repaired the townhouse, upgrading the drywall, and made repairs to the shed. Because Appellee did not timely repair these structures, Appellant suspended payments of his HOA fees. The Maryvale Justice Court found that appellant breached his obligation to pay HOA fees, as these fees are not tied into the duty of the HOA to make timely repairs. Also, due to Appellee's failure to timely repair the structure, Appellant lost $557.00 because they could not rent the property.

The Justice Court also found that Appellee spent $3250.00 in repairs to the outside structure, as required by the HOA's Declaration of Restrictions. The court found that Appellants spent $1070.00 attempting to repair the outside wall, but failed to comply with the HOA's strict

color scheme, as required by the HOA's Declaration of Restrictions. Appellants received full restitution ($3425.00) from the drunken tortfeasor through the City of Phoenix. The Maryvale Justice Court awarded Appellee $2483.96 for past-due HOA fees, $3250.00 for their portion of the restitution Appellant received from the tortfeasor, and attorney's fees and costs. The Maryvale Justice Court awarded Appellant $557.00 for the lost rents, and awarded them attorney's fees and costs.

The first issue to be addressed is whether the Justice Court erred in denying Appellant's Motion to Set Aside the findings of Facts and Conclusions of Law. Appellants assert that the judgment should be set aside because the court's decision was based on fraudulent and manufactured evidence provided by Appellee. Appellants correctly argue that a judgment unfairly obtained due to the misconduct of one of the parties must be vacated.[1] Rule 60(c) of the Arizona Rules of Civil Procedure states:

> On motion and upon such terms as are just the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (3) **fraud** (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party.

This issue of the existence of fraud involves the sufficiency and quality of evidence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[2] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[3] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[4] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[5] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of

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[1] *Norwest Bank (Minnesota), N.A. v. Symington*, 197 Ariz. 181, 3 P.3d 1101, 312 Ariz. Adv. Rep. 11 (App. 2000);

[2] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

[3] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[4] *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[5] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

the lower court.[6] The Arizona Supreme Court has explained in *State v. Tison*[7] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[8]

After a careful examination of the record, substantial evidence exists to support the action of the Justice Court. Although this court is extremely reluctant to disturb the lower court's factual findings, I will not hesitate to correct legal error. However, there is no evidence in the record suggesting fraud. Appellee brought the potential mistake as to the $975 check to the attention of the court and Appellants in its first pleading after it realized the court may have been misled; Appellants never questioned any of Appellee's calculations. Appellee fulfilled its duty of candor by notifying the court and Appellants of the error. Appellants subsequently raised the issue in the Justice Court on remand and the judgment for Appellee was reduced by $975.00. Justice and equity have been served, and the Justice Court's denial of Appellant's Motion to Set Aside the findings of Facts and Conclusions of Law was proper and supported by the record.

The second issue is whether the Justice Court erred in awarding Appellee a substantial portion of the $3450.00 in restitution Appellant's received. The tortfeasor paid $80 above and beyond the cost of the repairs by both Appellant and Appellee. To allow Appellants to receive the full restitution *and* the $2,275.00 in repairs performed by Appellee would be a windfall. The HOA's Declaration of Restrictions does not address the situation before us, where a homeowner receives monies from a tortfeasor and where the HOA has made repairs. Here, the doctrines of *quantum meruit* and unjust enrichment apply. Appellee correctly argues that there is an implied-in-law provision that the Appellants pay Appellee in *quantum meruit* for the repairs, so as to avoid unjust enrichment. An implied-in-law contract is not "created or evidenced by explicit agreement, but inferred by the law as a matter of reason and justice from the acts and conduct of the parties and circumstances surrounding their transaction."[9] Quantum meruit is an equitable doctrine based on the concept that anyone benefiting from the labor and materials of another

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[6] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[7] SUPRA.
[8] Id. at 553, 633 P.2d at 362.
[9] *Carroll v. Lee*, 148 Ariz. 10, 712 P.2d 923, 54 USLW 2431 (1986); *Alexander v. O'Neil*, 77 Ariz. 91, 267 P.2d 730 (1954).

should not be unjustly enriched.[10] To allow Appellants to keep the restitution monies and the benefit from the labor and materials provided by Appellee would undermine equity and defeat any sense of justice. Therefore, the Justice Court did not err in awarding Appellee a substantial portion of the $3450.00 Appellants received in restitution.

The final issue is whether the Justice Court erred in its award of attorney's fees. The claims before the Justice Court were not simple breach of contract claims. Appellee incurred substantial attorney's fees due to Appellant's failure to disclose the restitution award, while maintaining a claim against Appellee for the same damages. Appellee's attorney spent hours investigating, researching, and preparing memoranda for trial. Further, Appellant's vague contesting of the ledger required hours of amassing and reading the ledgers, then hours preparing memoranda based on this information. Appellee is entitled to attorney's fees and costs concerning the delinquent account contract claim because the HOA's Declaration of Restrictions is a contract that provides for such fees. A.R.S. §12-341.01 entitles Appellee to attorney's fees and costs concerning the remaining claims due to the fact that Appellee was the successful party at trial. Therefore, the Justice Court did not err in its awarding of attorney's fees.

IT IS THEREFORE ORDERED affirming the judgement of the Maryvale Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Maryvale Justice Court for all further, if any, and future proceedings, with the exception of the attorneys fees and costs on appeal.

IT IS FURTHER ORDERED that counsel for Appellee submit its Application and Affidavit for Attorneys Fees and Costs incurred on appeal and lodge a judgment consistent with this minute entry before April 21, 2003.

[10] *Stapley v. American Bathtub Liners, Inc.*, 162 Ariz. 564, 785 P.2d 84 (Ariz.App. 1989).